

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

THIS DOCUMENT RELATES TO ALL
CLASS ACTIONS

)
) MDL No. 1456

)
) CIVIL ACTION: 01-CV-12257-PBS

)
) Judge Patti B. Saris

PLAINTIFFS' MOTION TO COMPEL PRODUCTION BY AMGEN, INC.

Plaintiffs respectfully move the Court for an order a) compelling Amgen to produce within 30 days all documents and other materials called for by plaintiffs' Omnibus Requests for Production; b) extending the close of fact discovery as to Amgen to a date six months after Amgen has complied with its discovery obligations; c) providing that Amgen may not withhold any documents responsive to plaintiffs' Omnibus Requests for Production on the basis of any objections to production, including any objections grounded on the attorney-client privilege, work-product doctrine, trial-preparation doctrine, or any similar doctrine, and further providing that any objections already made, including any based on the attorney-client privilege, work-product doctrine, trial-preparation doctrine, or any similar doctrine, are deemed waived and of no effect, such that Amgen must produce *all* responsive documents promptly; and d) ordering Amgen to pay a sanction of \$100,000.00 to the plaintiffs for its flagrant disregard of Case Management Order No. 10 and its obligations under the Federal Rules of Civil Procedure, which conduct has prejudiced plaintiffs as they prepare for trial and otherwise prosecute this case, and for its manipulation of the discovery process. In addition, plaintiffs ask that the Court order Amgen to reimburse plaintiffs for the costs, including attorneys' fees, incurred in filing and litigating this motion.

This motion is supported by a memorandum of law filed of even date, together with the declarations of Steve W. Berman and Donald E. Haviland, Jr., with exhibits to both.

DATED: October 28, 2005

By /s/ Steve W. Berman
Thomas M. Sobol (BBO#471770)
Edward Notargiacomo (BBO#567636)
Hagens Berman Sobol Shapiro LLP
One Main Street, 4th Floor
Cambridge, MA 02142
Telephone: (617) 482-3700
Facsimile: (617) 482-3003
LIAISON COUNSEL

Steve W. Berman
Sean R. Matt
Robert F. Lopez
Hagens Berman Sobol Shapiro LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

Elizabeth Fegan
Hagens Berman Sobol Shapiro LLP
60 W. Randolph Street, Suite 200
Chicago, IL 60601
Telephone: (312) 762-9235
Facsimile: (312) 762-9286

Eugene A. Spector
Jeffrey Kodroff
Spector, Roseman & Kodroff, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300
Facsimile: (215) 496-6611

Marc H. Edelson
Allan Hoffman
Hoffman & Edelson
45 West Court Street
Doylestown, PA 18901
Telephone: (215) 230-8043
Facsimile: (215) 230-8735

Kenneth A. Wexler
Jennifer F. Connolly
The Wexler Firm LLP
One North LaSalle Street, Suite 2000
Chicago, IL 60602
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

Samuel D. Heins
Alan I. Gilbert
Susan E. MacMenamin
Heins, Mills & Olson, P.C.
3550 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 338-4605
Facsimile: (612) 338-4692
**CO-LEAD COUNSEL FOR
PLAINTIFFS**

CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing **PLAINTIFFS' MOTION TO COMPEL PRODUCTION BY AMGEN INC.** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on October 28, 2005, a copy to LexisNexis File & Serve for posting and notification to all parties.

By /s/ Steve W. Berman

Steve W. Berman

HAGENS BERMAN SOBOL SHAPIRO LLP

1301 Fifth Avenue, Suite 2900

Seattle, WA 98101

(206) 623-7292